PLUNKETT COONEY

Employer May Be Found Liable Under Rico For Its Involvement In Denying Worker's Disability Compensation Claims

November 3, 2008

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The federal Racketeer Influenced and Corrupt Organizations Act (RICO) was initially enacted as a tool to fight organized crime.

But this month, the Sixth Circuit Court of Appeals dealt another blow to employers when they approved RICO's application to an employer who allegedly had been interfering with its employees' rights to receive benefits under Michigan's Worker's Disability Compensation Act.

In *Brown v Cassens Transport Co*, the plaintiffs were current and former employees who brought a class action claim against Cassens Transport. They alleged that Cassens Transport hired a third party administrator to serve as its claims adjuster and that, together, they both selected Dr. Saul Margules and other doctors to examine the plaintiffs to determine whether they were disabled and eligible to receive benefits.

The plaintiffs further alleged that Dr. Margules and the other physicians were deliberately selected to "give fraudulent medical opinions that would support the denial of worker's compensation benefits and that the defendants ignored other medical evidence in denying them benefits."

Finally, the plaintiffs alleged that the defendants "made fraudulent communications amongst themselves and to the plaintiffs by mail and wire," thereby violating RICO.The Sixth Circuit found these activities, if proven, sufficient to support a RICO claim against the employer, claims adjuster and doctors.

This is significant to employers because RICO provides for substantial criminal penalties (up to 20 years in prison and, under some circumstances, life in prison, and forfeiture of property) and significant civil penalties, including three-fold damages, costs, and attorneys' fees.

This case emphasizes the importance of employers removing themselves from the claims process in workers' compensation matters. Except in unusual circumstances, employers should not convey their opinion regarding the validity of a claim (or, more often, the lack thereof) to the claims adjuster or directly communicate with the physician who has examined the employee.

The processing of claims should be handled by the claims adjuster and employees who have made claims should be required to communicate directly with that adjuster without employer involvement. Employers who insert themselves in the process now not only run the risk of retaliation claims, but may also face a RICO action.

To read more on *Brown v Cassens Transport Co*, click here.